

Subject: In the matter of petition under sections 17(3) & 17(4) of the Electricity Act, 2003 seeking approval for creation of security interest over all of the petitioner's assets in favour of Respondent No. 2 (Catalyst Trusteeship Ltd. as security Trustee acting for the benefit of the Lender) (or any of their assignees, transferees or novates) in respect of the petitioner's project.

Petition No. 75/2023

ORDER

**(Hearing through Video Conferencing)
(Date of Hearing: 20th February, 2024)
(Date of Order: 26th February, 2024)**

M. P. Power Transmission Package – II Ltd., New Delhi - Petitioner

V/s.

1. M. P. Power Management Co. Ltd., Jabalpur
 2. Catalyst Trusteeship Ltd., New Delhi
 3. REC Ltd., New Delhi
 4. M. P. Power Transmission Co. Ltd., Jabalpur
- Respondents

Shri Vishal Binod, Advocate and Shri Dilip Moolchandani, Representative appeared on behalf of the petitioner.

Shri Alok Shanker, Advocate and Shri Vishwat Chouhan, Manager appeared on behalf of the Respondent No. 1.

None appeared on behalf of Respondent No. 2 and Respondent No. 3.

Shri V. S. Pani, CE, Shri Rajeev Adlakha, EE and Shri Abhinav Anand, AE appeared on behalf of the Respondent No. 2.

The subject petition has been filed by M. P. Power Transmission Package – II Limited under sections 17(3) & 17(4) of the Electricity Act, 2003 seeking approval for creation of security interest over all of the petitioner's assets in favour of Catalyst Trusteeship Ltd. (Respondent No. 2) as security Trustee acting for the benefit of the Lender (Respondent No. 3) or any of their assignees, transferees or novates, in respect of the petitioner's project.

Petitioner's submission:

2. In the subject petition, the petitioner has broadly submitted as under;
 - i. *The Petitioner herein MP Power Transmission Package-II Limited, is a company incorporated and registered under the Companies Act, 2013, with corporate identification number U40100DL2020GOI368275 and its registered office at C-105, Anand Niketan, South Delhi, New Delhi – 110 021.*

- ii. *The Government of Madhya Pradesh vide Gazette Notification dated April 13, 2020, notified REC Transmission Projects Company Limited (“RECTPCL”) to be the Bid Process Coordinator for the purpose of selection of Bidder as Transmission Service Provider (TSP) for “Development of intra – state Transmission work in M.P through Tariff Based Competitive Bidding: - II”. Subsequently, RECTPCL, on August 20, 2020, incorporated MP Power Transmission Package II Limited (i.e. the Petitioner) as its 100% wholly owned subsidiary to initiate activities for execution of the Project and subsequently to act as the TSP after being acquired by the successful bidder through Tariff Based Competitive Bidding Process.*
- iii. *RECTPCL, on behalf of the Petitioner, entered into a Transmission Service Agreement on February 5, 2021 (“TSA”) with the Respondent No. 1 who is the beneficiary of the inter-state transmission system being developed by the Petitioner as part of the project in Madhya Pradesh involving construction of 220 KV DC, 132kV DCDS and 132kV DCSS line of 1070 Ckt KM along with 18 (Eighteen) substations on build, own, operate and manage basis (hereinafter referred to as the “Project”).*
- iv. *Adani Energy Solutions Limited (formerly known as Adani Transmission Limited) was declared as the successful bidder for the Project and accordingly, RECTPCL issued a Letter of Intent to Adani Energy Solutions Limited on September 13, 2021. Adani Energy Solutions Limited acquired 100% shareholding of the Petitioner on November 1, 2021, and hence Petitioner is now a subsidiary of Adani Energy Solutions Limited.*
- v. *The Petitioner was granted a Transmission Licence on May 17, 2022 by this Commission for “Development of intra – state Transmission work in M.P through Tariff Based Competitive Bidding: Package - II” for a period of 25 years.*
- vi. *For the purposes of part financing the implementation of the Project, REC Limited (“Lender”), a Government of India Undertaking, has provided/ agreed to provide financial assistance/loan aggregating to INR 764,75,00,000/- (Indian Rupees Seven Hundred and Sixty Four Crores and Seventy Five Lakhs Only) to the Petitioner. A copy of the relevant provisions of the Loan Agreement dated August 18, 2023 is submitted.*
- vii. *The Lender, in terms and conditions of sanctioning the loan under the Financing Documents, has the right to transfer or assign or novate or securitize or down sell, all or any part of their commitment under the Financing Documents along with the underlying security interest and/ or any of their rights, benefits or obligations thereunder and under other financing /transaction documents and the Project documents to any bank /financial institution /non-banking financial company / other person at any time.*
- viii. *The Respondent No. 2 i.e., Catalyst Trusteeship Limited is acting as the Security Trustee for the purpose of holding the security interest for benefit of the Lender (or its assignees, novatees or transferees) pursuant to the Security Trustee Agreement dated August 18, 2023 (hereinafter referred to as the “STA”).*
- ix. *That, as on date, the Lender has disbursed INR 490,00,00,000 (Indian Rupee Four Hundred and Ninety Crores Only) to the Petitioner as part of the loan.*

- x. *In terms of the Loan Agreement, the Petitioner is required to create Security (as defined under the Loan Agreement) in favour of the Respondent No. 2 acting for the benefit of the Lender which, inter alia, includes the following:*
- a. *A first charge by way of mortgage of all the immovable properties present and future, of the Petitioner including the project site;*
 - b. *A first charge by way of hypothecation of all the movable properties, including movable Project Assets, moveable plant and machinery, machinery spares, equipment, tools and accessories, furniture, fixtures, vehicles, stocks and all other movable assets, book debts, bills, monies, including bank accounts, receivables, claims of all kinds, stocks including consumables and other general stores present and future, of the Petitioner;*
 - c. *A first charge by way of hypothecation over all accounts of the Petitioner, including, the Trust and Retention Account and the Sub-account(s) or any account created for any reserve(s) to be created and maintained (or any account in substitution thereof) that may be opened in accordance with the Trust and Retention Account Agreement and the Financing Documents, or any of the other Project Documents and all funds from time to time deposited therein, the receivables and all Permitted Investments or other securities representing all amounts credited to the Trust and Retention Account, any letter of credit and other reserves of the Petitioner present and future whatever maintained;*
 - d. *First ranking charge, by way of assignment or creation of security interest (as contemplated by the Lender in accordance with the terms thereof) including all rights, titles, interests, benefits, claims and demand whatsoever of the Petitioner; in Project Documents (including without limitation to TSA, Transmission License, EPC Contract, contract under O&M Arrangement (if any) and clearances, Insurance Contracts, service contracts, proceeds under the Insurance Contracts, performance bonds, contractors' guarantee, bank guarantees, advance payment guarantee and any letter of credit provided by any Person under the Project Document, tie-ups, approvals, permissions, right of way (ROW) relating to the Project, guarantees and warranties issued by Original Equipment Manufacturer, relating to Project duly acknowledged and consented to by the Counterparties to the Project Documents (if such Project Document requires prior consent of such counterparties), as amended, varied or supplemented from time to time, both present and future; and*
 - e. *Pledge of equity share capital (or any other quasi-equity) of the Petitioner held by the Promoter, representing 51% (fifty-one percent) of the Equity Contribution.*
- xi. *Accordingly, the Petitioner has agreed to create security interest on the assets/properties mentioned in paragraph 10 above (the "Security Interest") in terms of Article 3 of the Loan Agreement in favour of the Respondent No. 2 for the benefit of the Lender (or any of their assignees, transferees or novatees) by executing the Security Documents (as defined under the Loan Agreement) and has agreed that it shall be lawful for the Lender and/or the Respondent No. 2 (Security Trustee) (or any of their assignees, transferees or novatees), upon enforcement of Security Interest, to enter into and take possession of the properties over which Security Interest has been created in terms of the Security Documents.*
- xii. *Under the Financing Documents, it is stipulated that on enforcement of the Security Interest it shall be lawful for the Lender and/or the Respondent No. 2 and either of*

their assigns, transferees and novatees, to enter into and take possession of the assets/properties mortgaged/hypothecated/charged/ assigned for their benefit and substitute themselves or any one of them or its nominees for the Petitioner under any or all of the Project document(s).

- xiii. *The Petitioner is permitted to create encumbrances over the Project Assets in accordance with Article 15.2.2 of the TSA which provides that the Petitioner may create any encumbrance over all or part of its receivables, letter of credit or the other assets of the Project in favour of the Lender or the lender's representative on their behalf, as security for amounts payable under the financing agreements and any other amounts agreed by the parties. This permission is subject to:*
- a) *the Lender or the lender's representative on their behalf shall have entered into the financing agreements / documents and agreed in writing to the provisions of the TSA; and*
 - b) *any encumbrance granted by the Petitioner in accordance with Article 15.2.2 of the TSA shall contain provisions pursuant to which the Lender (or the lender's representative on their behalf agrees unconditionally with the Petitioner to release from such encumbrances upon payment by the Petitioner to the Lender of all amounts due under the financing agreements.*
- xiv. *In accordance with provisions of the TSA and Sections 17(3) and (4) of the Electricity Act, 2003 as quoted above, the Petitioner, as a licensee, submits that prior approval of this Commission is essential for creation of Security Interest over all the movable and immovable assets of the Petitioner (as stipulated under the Loan Agreement) in favour of the Respondent No. 2 (Security Trustee) acting for the benefit of the Lender and for its subsequent transferees, assigns, novatees thereof and any refinancing lenders to the Project.*

3. With the above submission, the petitioner in the aforesaid facts and circumstances prayed that the Commission may be pleased to:
- (a) *Approve the creation of Security Interest by way of hypothecation/ mortgage/charge/assignment (as applicable), over all assets including the assets listed at Paragraph 10 above, and all the movable and immovable assets, accounts, Project documents (including assignment of transmission licence) etc., both present and future, of Petitioner in terms of the Financing Documents, or as may be agreed between the Petitioner and the Lender from time to time, in favour of Lender/Security Trustee to secure the financial assistance availed/to be availed from the Lender and its subsequent transferees, assigns, novatees and substitutes thereof and any refinancing lenders to the Project.; and*
 - (b) *Pass any or such further orders as may be deemed fit and proper in the facts and circumstances of the case.*
4. On preliminary scrutiny of the subject petition, the Commission observed that section 17(3) & 17(4) of the Electricity Act, 2003 have been invoked by the petitioner. The Commission observed the following:
- i. Section 17 of the Electricity Act, 2003 provides as under:
 - (1) No licensee shall, without prior approval of the Appropriate Commission, - (a) undertake any transaction to acquire by purchase or takeover or otherwise, the

utility of any other licensee; or (b) merge his utility with the utility of any other licensee: Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situated in a State other than the State in which the utility referred to in clause (a) or clause (b) is situated.

- (2) Every licensee shall, before obtaining the approval under sub section (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.
 - (3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission.
 - (4) Any agreement relating to any transaction specified in subsection (1) or subsection (3), unless made with, the prior approval of the Appropriate Commission, shall be void.
- ii. Further, the Commission also observed that:
- a. Lender (REC Limited) has provided / agreed to provide loan of Rs 764.65 Crores, but it has not been mentioned as Respondent.
 - b. Though the petitioner has been granted license for this project, however, since there is a meshed network for transmission within the state, so transmission links / other issues may be seen by STU (MPPTCL) also. But, STU has not been made a Respondent.
- iii. Therefore, the Commission vide letter No. 2589 dated 23/11/2023 directed the petitioner that the Lender (REC Limited) and the STU (MPPTCL, Jabalpur) may also be added as Respondents.
5. In compliance thereof, the petitioner vide letter dated 05/12/2023 filed amended memo of parties and listed following four Respondents in the subject petition:
- R1: MPPMCL Jabalpur
 - R2: Catalyst Trusteeship Ltd.
 - R3: REC Ltd.
 - R4: MPPTCL Jabalpur.

Procedural History;

6. At the motion hearing held on 06/02/2024, the petitioner was heard. The petitioner was asked to come out clearly, whether provisions of Section 17(1) and 17(3) of the Electricity Act, 2003 are independent of each other. It was mentioned by the petitioner during the hearing that similar cases have been decided by CERC. The Commission directed the petitioner to make additional submissions on the aforesaid issues and any other relevant issues, within 3 days. The case is reserved for Order on admissibility.
7. The petitioner vide Affidavit dated 08/02/2024 broadly submitted as under:
 - i. *That the captioned Petition has been filed under sections 17(3) and 17(4) of the Electricity Act, 2003 ("the Act") seeking prior approval for creation of security interest over all of the Petitioner's Assets in favour of Respondent No. 2 (as the Security Trustee acting for the benefit of the Lender) in respect of the Petitioner's transmission project comprising 220 KV DC, 132kV DCDS and*

132kV DCSS line of 1070 Ckt KM along with 18 (Eighteen) substations on build, own, operate and maintain basis.

- ii. *Section 17(1) of the Act pertains to transactions between licensees involving either acquisition of utility of another licensee, or merger of the concerned licensee with the utility of any other licensee. As such, any application of section 17(1) requires the transaction to be between two licensees, whereas in the present case, the Petitioner is the only licensee involved. Hence, section 17(1) can have no application in the present case, on this ground alone.*
- iii. *No transaction of the nature indicated in section 17(1), is contemplated or proposed by the Petitioner in the present proceedings. As such, the provisions of section 17(1) are not attracted in the present case.*
- iv. *A list of orders passed by the Hon'ble CERC and various state regulatory commissions in proceedings under section 17(3) of the Act, seeking relief of a similar nature were submitted.
CERCs Orders dated 10.08.2023 in Petition No. 188/MP/2023 and dated 18.06.2022 in Petition No. 100/MP/2022.
UPERC's Order dated 14.09.2023 in Petition No. 1970/2023.
RERC's Order dated 18.08.2021 in Petition No. 1910/21.
The petitioner submitted that a perusal of these orders show that the reliefs sought by the Petitioner in the captioned Petition are maintainable under sections 17(3) and 17(4) of the Act, and deserve to be granted for the purpose of securing financing for the Project.*
- v. *It stated that the "Conditions of Transmission License applicable to the Transmission Licensee (including deemed licensee)" ("Licence Conditions") published by this Hon'ble Commission under section 16 of the Act, also recognise the Petitioner's rights to utilise its transmission assets as a collateral for financing its Project. In this regard, reference may be had to **Clause 11.5 of the Licence Conditions, which is as follows:**

"11.5 Notwithstanding what is stated above, the Licensee will be entitled to utilize the assets as a means of facilitating financing its investment requirements, including collateral for debt financing, sale and lease back, securitization of receivables, subject to the conditions:
(a) that the Licensee will inform the Commission about such arrangement/s at least 15 days prior to the effective date of the relevant agreement/s;
(b) the Licensee acts in a prudent and reasonable manner in such utilization of assets; and
(c) the Licensee retains the Operational Control over assets in the transmission system."*
- vi. *It is therefore submitted that the reliefs sought by the Petitioner, and the basis thereof, are well recognised by the regulatory commissions in the country, including this Commission, and hence the said reliefs ought to be granted.*
- vii. *It is humbly submitted that the creation of security interest in favour of lenders/security trustee financing the Project is essential for timely commissioning of the Project.*

- viii. *Here, it is pertinent to highlight the deadline for the Petitioner to create the security interest contemplated under the lending documents is 26.02.2024, and any failure to comply with the said deadline may result in the Petitioner being saddled with significant penalties from its lenders.*
- ix. *As such, it is humbly prayed that a final order granting the prior approval sought under the Petition may be issued at the earliest, failing which the Petitioner will be unjustly and gravely prejudiced.*
8. The Commission vide daily Order dated 09/02/2024 considered the aforementioned submissions made by the petitioner vide Affidavit dated 08/02/2024 and the petition was admitted. The petitioner was directed to serve copy of the petition & additional submission on respondents within a day and report compliance to the Commission. The respondents were directed to submit their reply in hard & soft copy on Affidavit within 7 days, thereafter. A copy of the same be served to the petitioner simultaneously. The respondents were also required to intimate Name, E-mail ID, mobile no. and other details of the OIC and Advocate, if any for providing link of hearings as per relevant Guidelines available on MPERC's website. The petition was listed for hearing on the 20th February, 2024.
9. By affidavit dated 13/02/2024, the Respondent No. 2 (Catalyst Trusteeship) broadly submitted as under:
- i. *REC Limited (Respondent No. 3) has entered into a Loan Agreement dated 18/08/2023 with the petitioner wherein REC Limited has agreed to provide a loan aggregating to Rs 764.75 Crores to the petitioner.*
- ii. *The Respondent No. 2 is acting as Security Trustee for purpose of holding the security interest for benefit of the Lender (REC Limited or its assignees, novates or transferees) pursuant to the Security Trustee Agreement dated 18/08/2023.*
- iii. *The petitioner is required to create security interest on the assets / property mentioned in para 10 of the petition (in terms of Article 3 of the Loan Agreement), in favour of Respondent No. 2, for the benefit of REC Ltd. Before 26/02/2024, for which approval of this Commission is required. Therefore, we have no objection to the prayers sought by the petitioner in this petition & the Affidavit filed by the petitioner.*
10. By affidavit dated 14/02/2024, the Respondent No. 3 (REC Limited) broadly submitted as under:
- i. *REC Limited has entered into a Loan Agreement dated 18/08/2023 with the petitioner wherein REC Limited has agreed to provide a loan aggregating to Rs 764.75 Crores to the petitioner.*
- ii. *The petitioner is required to create security interest on the assets / property mentioned in para 10 of the petition (in terms of Article 3 of the Loan Agreement), in favour of Respondent No. 2, for the benefit of REC Ltd. Before 26/02/2024, for which approval of this Commission is required. Therefore, we have no objection to the prayers sought by the petitioner in this petition & the Affidavit filed by the petitioner.*
- iii. *The documentation process for creation of security interest, after approval of this Commission would take 4-5 business days. Therefore, we humbly request this Commission to consider the timeline and approve the creation of security interest as sought by the petitioner, at the earliest.*

11. By letter dated 19/02/2024, the Respondent No. 4 (MPPTCL) broadly submitted that MPPTCL stands by response of MPPMCL (Respondent No. 1) (beneficiary of the subject project) that may be submitted or argued before the Commission.
12. At the hearing held on 20/02/2024, the Commission heard the petitioner and the respondents. The petitioner broadly reiterated the contents of the petition and the additional submission dated 08/02/2024. The Respondent No. 4 (MPPTCL) reiterated the contents of their letter dated 19/02/2024. The Respondent No. 1 (MPPMCL) broadly submitted that the total project cost in the terms sheet is different from estimated project cost at the time of bidding. The tariff decided by this Commission under petition No. 58 / 2021 should not be adversely impacted by the financing plan proposed by the petitioner. Further Respondent No. 1 sought time to file written submission. The Commission granted 3 days' time to MPPMCL to file its written submission and the case was reserved for Order. Accordingly, daily Order dated 20/02/2024 was issued.
13. By communication dated 22/02/2024, the Respondent No. 1 (MPPMCL) broadly submitted the following:
 - i. *RECTPCL on behalf of the Petitioner entered into a Transmission Service Agreement dated 05.02.2021 ("TSA") with the Answering Respondent who is the beneficiary of the Project.*
 - ii. *Adani Energy Solutions Limited (formerly known as Adani Transmission Limited) ("Adani") was declared as the successful bidder for the Project and accordingly, they acquired 100% shareholding of the Petitioner on November 1, 2021, and hence Petitioner is now a subsidiary of Adani.*
 - iii. *In terms of the Respondent's submissions and as per the project financing scheme of the Petitioner, it is clear that creation of security interest on the assets of the Petitioner does not specifically fall under the ambit of Section 17(3) and (4) of the Act. The provision is only attracted in the event the license is proposed to be assigned or transfer of the utility of the licensee is proposed. It is arguable that when security interest is to be enforced, there is a transfer of assets of the licensee or utility that prior approval of this Commission would be required. Mere security creation may not require this Commission's approval. However, if for abundant caution the Petitioner/ lenders want to get regulatory approval from this Commission, the Answering Respondent does not have any objections to the prayers prayed for in this present petition.*
 - iv. *However, for appropriate procedures to be followed to obtain regulatory approval, it is imperative that this Commission direct the Petitioners to make certain further submissions/ impleadment in this regard as under:-*
 - a. *That the present petition should have been filed by the Petitioner and the Lender together. The lender is required to be one of the Petitioners and not a respondent in the present petition. The approval being sought by the Petitioner is for the event that the security is enforced then there will be a transfer of the utility to the Lender. The security would thus be enforced by the Lender. The Security Trustee is merely holding the assets on behalf of the Lender. However, the rights under the project financing scheme*

would be enforced by the Lender in case of any default by the Petitioner. Hence, as the right would vest with the Lender, the Lender should be a petitioner in the present proceedings.

- b. That the state DISCOMs could have also been made part to the present proceedings. The TSA has been signed by the Answering Respondent on behalf of the DISCOMs. Thus, any rights and liabilities that may arise from any transfer of the Petitioner's security would directly impact the DISCOMs as they are the end user of the Project.
- c. That the petitioner ought to provide loan documents and all financing documents in full for the scrutiny of this Commission and the Answering Respondent. This would ensure that any security creation over the assets of the Petitioner's would not affect the rights of the Answering Respondent and the DISCOMs in any manner in case of any default on loan by the petitioner in the future.
- d. That it is also pertinent to mention that the present project of the Petitioner is through the Tariff Based Competitive Bidding route. The tariff as decided by this Commission in its order in Petition No. 58 of 2021 must not be impacted by the financing plan. The financing plan should not adversely impact the Annual Fixed Cost of the Petitioner and there should not be any additional liability on MPPMCL or the Discoms by virtue of the financing plan. The same is especially relevant since the estimated project cost at the time of bid and total project cost in the Terms sheet are vastly different.
- e. That the Central Electricity Regulatory Commission as general practice maintains oversight during the process of security creation in these similar matters. It is prayed that this Commission does the same and direct the Petitioner and Respondent No. 2 to mandatorily submit all documents in relation to the security interest creation process once approval is given by this Commission. Regardless, it is apposite to note in this regard that the Respondent No. 2 in its affidavit has stated that they would take 4-5 business days in the documentation process after approval is granted by this Commission. The same may be granted to the Petitioner and Respondent No. 2 after which they may be mandatorily asked to submit said documents before this Commission.
- v. It is thus submitted that the answering respondent does not have objection on the grant of approval under Section 17(3) and 17(4) of the Act subject to compliance of the above mentioned conditions.

14. The Commission's observations are summarised as under:

- i. The Commission vide order dated 04th May 2022 in petition No. 59 of 2021 has approved Transmission License to the petitioner "M. P. Power Transmission Package-II Limited" to establish the Transmission System consisting of elements mentioned in para 3(i) of the aforesaid order, in accordance with the provisions of sections 14 & 15 of the Electricity Act, 2003 on the terms and conditions specified therein.

- ii. The Commission vide Order dated 19/05/2022 in petition no. 58 of 2021 has adopted transmission charges for the project at a levelized tariff of Rs. 1326.45 Million and non-escalable transmission charges.
- iii. For financing the project, the Lender (REC) signed Agreement dated 18/08/2023 to provide Loan of Rs 764.75 Cr to the petitioner as per the terms and conditions mentioned therein.
- iv. Catalyst Trusteeship Ltd (CTL) signed Security Trusteeship Agreement (STA) dated 18/08/2023 for purpose of holding the security interest for benefit of Lender (REC).
- v. In terms of Loan Agreement, petitioner is required to create Security in favour of CTL, which includes Mortgage of all immovable assets, Hypothecation of all movable assets, Hypothecation over all accounts, creation of security interest and pledge of Equity share capital representing 51% of Equity.
- vi. Article 15.2.2 of the TSA dated 05/02/2021 provides that the Petitioner may create encumbrance over all or part of its receivables or assets of the project in favour of the Lender / representative.
- vii. Petitioner has sought prior approval of the Commission for creation of security interest and hence it has filed the subject petition for approval. It is noted that the petitioner has not filed any IA for early hearing of the petition. However, in the submission made on 08/02/2024, it has indicated the dead line for the petitioner as 26th February, 2024 for the purpose of creating the security interest contemplated under the lending documents.
- viii. The provisions under Section 17(3) & (4) of the Electricity Act, 2003 provide for prior approval of the Commission for the purpose of assignment of license or transfer of utility or any part thereof by sale, lease, exchange or otherwise.
- ix. Clause 15 of TSA dated 05/02/2021 also provides for approval of the Commission.
- x. Regulation 11.5 of MPPERC (Conditions of Transmission License applicable to the Transmission Licensee (including deemed licensee) Regulations, 2004 provides for utilization of assets as a means of facilitating financing subject to conditions mentioned therein.
- xi. The Respondents generally have no objections to the prayer made by the petitioner.

15. Financing a project and the terms and conditions of such finance, are internal matter between the Lender and the Borrower. The Lender and Borrower are expected to undergo due diligence as per their own policies. The Commission emphasises that the Orders already passed by the Commission in petitions No. 59 of 2021 (regarding License and its terms and conditions) and petition no. 58 of 2021 (regarding Levelled Tariff and the Non-escalable transmission charges) must be complied with and in no case should the financing plan of the petitioner adversely impact the fixed cost or the tariff discovered through competitive bidding.
16. In view of aforesaid, based on the contents of the subject petition and other documents placed on record, the Commission is of the considered view that it would be appropriate to accord in-principle approval in this case. This in-principle approval is with the condition that the operational control shall continue to be retained by the petitioner and transmission licence granted by the Commission to the Petitioner cannot be assigned in favour of the Security Trustee or nominee of the lender without prior approval of the Commission at the time of creating rights in favour of such a nominee. Before agreeing to the assignment of the licence and the assets of the petitioner to the nominee of the lender, the Commission will evaluate such a nominee's experience in the development, design, construction, operation, and maintenance of transmission lines and whether it would able to execute the project and undertake transmission of electricity. The licensee, lender, security trustee or nominee shall be jointly required to approach the Commission to seek approval. They shall provide all necessary and due information for prudence check as per the provisions of the Electricity Act, 2003 and the applicable Regulations, as amended from time to time, to satisfy the Commission of the circumstances necessitating such a transfer.
17. Accordingly, in case of default by the licensee in debt repayment, the Commission may, on a joint application made by the licensee / lender / Security Trustee / nominee, approve the assignment of the licence to a nominee of the lender subject to proper due diligence of the process. Therefore, specific prior approval of the Commission shall always be needed for assigning the licence to the nominee of the lenders or transferring any assets to them. Lastly, financial documents and statements shall be filed by the petitioner as and when required by the Commission for any specific purpose.
18. Ordered accordingly. The petition stands disposed of in terms of the above.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman